

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)



REC'D 08 JUN 2004

WIPO PCT

Applicant's or agent's file reference 61829A	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/US 03/1852	International filing date (day/month/year) 17.04.2003	Priority date (day/month/year) 29.04.2002
International Patent Classification (IPC) or both national classification and IPC C07C69/533, C07C69/533		
Applicant DOW GLOBAL TECHNOLOGIES INC.		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 5 sheets, including this cover sheet.  
  
☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).  
  
 These annexes consist of a total of sheets.

- This report contains indications relating to the following items:
  - ☒ Basis of the opinion
  - ☐ Priority
  - ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - ☐ Lack of unity of invention
  - ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - ☐ Certain documents cited
  - ☐ Certain defects in the international application
  - ☐ Certain observations on the international application

Date of submission of the demand  17.11.2003	Date of completion of this report  04.06.2004
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 eprmu d Fax: +49 89 2399 - 4465	Authorized Officer  Kleidermigg, O  Telephone No. +49 89 2399-2143  

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/US 03/11852**

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-46 as originally filed

**Claims, Numbers**

1-44 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages: :  
☐ the claims, Nos.:  
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/US 03/1852**

---

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	7-44
	No: Claims	1-6
Inventive step (IS)	Yes: Claims	7-44
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-44
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/US 03/11852

**Section V**

D1: DE-A-4107056  
D2: EP-A-0328230  
D3: WO-A-9604289  
D4: JP(A) 56077243

The present application is directed to fatty acid or fatty acid ester compositions, an olefin metathesis process.

D1 discloses an olefin metathesis process and fatty acid ester compositions comprising for example an unsaturated C14-fatty acid methyl ester composition showing no metathesis catalyst poisons (cf. examples 1,3,4) and is, thus, novelty destroying for the matter of claims 1-5. The same applies to D3 (cf. page 17, paragraph 9.), which discloses the metathesis of oleic acid and ethylene.

The international preliminary examining authority is of the opinion, that, in general, a document disclosing a chemical compound and its preparation made this compound available to the public within the meaning of Article 33(2) in all grades of purity as desired by the person skilled in the art.

This is the case with respect to D1 and D3, thus the specific degree of chemical purity of the fatty acid or fatty acid ester compositions is not considered to represent a "new element" imparting novelty to matter of claims 1-6.

However, the features of claim 7 as well as those from claims 8-10 are not disclosed in D1 or D3 which are considered to represent the closest prior art.

Concerning the metathesis process claims 11-23, D3 represents the closest prior art and differs from the matter of claim 11 insofar that the feature of "feedstock composition derived from a seed oil" is not disclosed.

The process for the preparation of a polyester polyepoxide according to claims 24-28 differs from the closest prior art of D3 in the feature "feedstock composition derived from a seed oil". The polyester polyolefin composition according to claims 29, 30 as well as the polyester polyepoxide composition (claims 31, 32). The process of preparing a reduced chain  $\alpha,\omega$ -hydroxy -acid, -ester and/or -diol (claims 33-36), the  $\alpha,\omega$ -polyester polyol composition (claims 37-38), a process of preparing a reduced chain  $\alpha,\omega$ -amino acid,  $\alpha,\omega$ -aminoester and/or  $\alpha,\omega$ -amino alcohol (claims 39-42), a  $\alpha,\omega$ -polyester

polyamine composition (claims 43,44) are not disclosed in the closest prior art of D3.

The technical problem may be regarded as the provision of an improved metathesis process.

The solution is given in the independent claims and proposes features which are not directly deducible for the skilled person in the art from the closest prior art of D3.

Thus, the subject matter of claims 7-44 fulfil the requirements of Article 33(2) and (3) PCT and the subject matter of claims 1-6 does not fulfil the criteria of Article 33(2) and (3) PCT.

The term "lower" in combination with olefin as used e.g. in claims 11, 39,41 is unclear (Article 6 PCT).